IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 142 OF 2005

SHRI BHANUDAS ALIAS BABAN M.KUNKERKAR,SATTARI GOA ....Appellant

Versus

SHRI NARAYAN M.SHIRODKAR,SANKHALI GOA. ....Respondent

Mr. Arun Bras de Sa, Advocate for the appellant.

Mr. V. R. Tamba, Advocate for the respondent.

Coram:- D. D. SINHA, J.

Date:- 1st December, 2005

P.C.

Heard Mr. Bras de Sa, the learned Counsel for the appellant and Mr. Tamba, the learned Counsel for the respondent. The appellant is the original defendant. The respodent has filed the suit for recovery of amount of Rs.50,000/- which was alleged to have been borrowed by the appellant as loan. The suit was decreed. The appellant preferred the first appeal. The same was also dismissed. Therefore, the present second appeal.

2. The Counsel for the appellant states that the substantial question of law which arises for consideration in this second appeal is whether failure on the part of the Courts below to grant the defendant's application under Sections 47 and 73 of the Evidence Act, especially after the defendant had entered into the witness box and disputed his signature, is contrary to law and perverse and has resulted in gross miscarriage and/or failure of justice ? In order to consider this question of law raised by the appellant, the following things need to be considered. It is not in dispute that the application was made by the appellant/defendant to refer the

document at Exhibit-23 to the handwriting expert since the appellant was disputing his signature, after the evidence of the plaintif and the defendant was over. Secondly, the trial Court has passed an order on this application. However, the appellant/defendant has not challenged the said order by approaching the higher forum.

3. Be that as it may, in the instant case, it is not in dispute that the trial Court has undertaken the procedure contemplated under Section 73 of the Evidence Act by comparing the signature on the disputed document of the appellant/defendant with the signature on the Wakalatnama and, therefore, the above referred question of law raised by the appellant cannot be treated to be a substantial question of law.

4. The other questions of law raised by the appellant are also purely question of facts recorded by the trial Court and cannot be treated as substantial questions of law. In the circumstances, the second appeal suffers from merits. The second appeal is dismissed.

D. D. SINHA, J.

ssm.